IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 183 of 2007
With
COMPANY PETITION No. 184 of 2007
To
COMPANY PETITION No. 185 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAFAL REALTY PRIVATE LIMITED - Petitioner(s)
Versus
. - Respondent(s)

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Appearance :
MR SUDHIR M MEHTA for Petitioner(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 29/11/2007

COMMON ORAL JUDGMENT

These are the petitions filed by three petitioner companies for sanction of the scheme of

arrangement in the nature of amalgamation of Deep Infrastructure Private Limited and Safal Infrastructure Private Limited, the transferor companies with Safal Realty Private Limited, the transferee company under section 391 read with section 394 of the Companies Act, 1956 (hereinafter referred to as “the Act”). All the petitioner companies belong to the same group of management.

2. The transferor companies and the transferee company belong to the same group of management and are engaged in a similar line of commercial activities in the realty sector. Moreover, the business line is similar as well as complementary in nature, hence, the Board of Directors of all these companies thought it fit to amalgamate them for achieving synergic advantages. It is thought fit to consolidate all the operations under one company. This would lead to benefits of economies of the scale, make administration easier and control systems more efficiently. The amalgamated company would be in a position to maximise its profits through optimum utilisation of its resources and minimising administration and operational costs. This will also

result in enhancement of financial strength and flexibility. It will also give the amalgamated entity a competitive edge in the market due to enhanced product range, increased research capabilities and establish distribution network. Thus, the amalgamation would be in the mutual advantage of both the transferor and the transferee companies.

3. Vide order dated 13th September 2007 passed in Company Application No.342 of 2007 in the matter of Safal Realty Private Limited, the transferee company (copy at pages 49 & 50 of the compilation of Company Petition No.183 of 2007), meetings of equity shareholders and unsecured creditors were dispensed with in view of the written consent letters placed on record. There are no secured creditors and certificate of the Chartered Accountant for such purpose was produced on the record of the Company Application.

4. Similarly, vide order dated 13th September 2007 passed in Company Application No.343 of 2007 in the case of Deep Infrastructure Private Limited, the transferor company, meetings of all the equity

shareholders as well as of unsecured creditors including the unsecured creditors of current liability and the secured creditors were dispensed with in view of the written consent letters placed on record.

5. In the same manner, vide order dated 13th September 2007 passed in Company Application No.344 of 2007, in the case of Safal Infrastructure Private Limited, meetings of all the equity shareholders as well as all unsecured creditors and the secured creditors were dispensed with in view of the written consent letters placed on record.

6. All the three petitions were admitted vide separate orders dated 19th September 2007. Public notices for Company Petition No.184 and 185 of 2007 were duly advertised in the newspapers, viz. Indian Express (English daily) and *Sandesh* (Gujarati daily), both of Ahmedabad Edition on 26th September 2007. Publication in the Government Gazette was dispensed with. Common affidavit dated 9th October 2007 filed in these two petitions confirms the same. No one has come forward with any objection to the said petitions

even after publication. Similarly, public notices for Company Petition No.183 of 2007 were duly advertised in the newspaper. A separate affidavit is filed in Company Petition No.183 of 2007 confirming that advertisements were published in English daily, Indian Express, Ahmedabad Edition and Gujarati daily, *Sandesh*, Ahmedabad Edition on 25th September 2007.

7. Notices of the petition of the petitioner-transferor companies were served upon the Official Liquidator attached to this Court. Vide his separate reports filed in Company Petitions No.184 of 2007 and 185 of 2007 in October 2007, it is observed that the affairs of the company have not been conducted in a manner prejudicial to the interest of their members or to the public interest.

8. Notices of the petitions have been served upon the Central Government and Shri Harin P. Raval, learned Assistant Solicitor General appears for the Central Government. A common affidavit was filed by Shri P.L. Malek, Assistant Registrar of the Companies, from the Office of the Registrar of Companies, Ahmedabad dated 31st October 2007 in

Company Petitions No.183 to 185 of 2007, wherein certain observations are made by the Regional Director. A further affidavit is filed by Mr.R.K. Dalmia, Deputy Registrar of the Companies from the Office of the Registrar of Companies, Ahmedabad. An additional affidavit is filed by Mr.Rupesh Balvantbhai Brahmbhatt, Director of Safal Realty Private Limited, wherein issues raised by the Regional Director were dealt with. So far as the first objection is concerned, a copy of the latest audited financial statement for the year ended on 31st March 2007 was already annexed with the petitions. However, copies of the accounts for the year ended on 31st March 2007 for the transferee company as well as the transferor companies were annexed along with the said additional affidavit. So far as the second issue is concerned it is submitted that in case of increase of share capital or transfer of share capital of transferor companies to transferee company or combined authorised capital not exceeding authorised capital of all the three companies, no further fee or stamp duty is required to be paid, because the requisite fee has already been paid on the authorised capital of the transferor companies and merely because of their merger with the

transferee company, there is no reason why the same fee should be paid again by the transferee company on the same authorised capital. The scheme provides that authorised capital of the transferor companies would be merged to the authorised share capital of the transferee company without requirement of payment of any ROC fees/ stamp duty/ registration charges, as such charges have already been paid in the past by the respective companies. Moreover, Articles of Association of the transferee company empowers the transferee company to increase its share capital. It is also stated in the said affidavits that section 391 of the Act is a complete Code in itself. A scheme of arrangement/ amalgamation falls squarely within the four corners of the said section. The scheme of arrangement/ amalgamation can be sanctioned even if it involves doing acts for which the procedure is specified in other sections of the Act. It is also stated that on the issue of payment of stamp charges/ registration fees, it has been held by various High Courts that since the transferor company has already paid due registration fees at the relevant point of time, it is not necessary for the transferee company to pay the same fees/ charges again on amalgamation of transferor company to the

transferee company. It is permissible and not necessary to follow the procedure under section 94/ 97 of the Act, read with section 391 and 394 of the Act, under which the scheme has to be sanctioned. Since the Regional Director himself has not objected to the share exchange ratio between the transferor companies and the transferee company and it was made clear in the affidavit filed by Mr.R.K. Dalmia, Deputy Registrar on 19th November 2007, there is no need to call for any explanation from the petitioner companies on this issue.

9. I have heard Mr.Sudhir M. Mehta, learned advocate appearing for the petitioner-companies and Mr.Harin P. Raval, learned Assistant Solicitor General appearing for the Central Government. Submissions have been made by him explaining the issues raised by the Office of the Regional Director. Considering the same along with affidavit placed on record, I am satisfied that the observations made by the Registrar of the Companies do not survive and the Scheme of Arrangement would be in the interest of the companies, their members and creditors. The prayers in terms of para 26(a), 21(a) and 21(a) made in

Company Petitions No.183 of 2007, 184 of 2007 and 185 of 2007 respectively are hereby granted.

10. The petitions are disposed of accordingly. So far as cost to be paid to the learned Central Government Standing Counsel is concerned, I quantify the same at Rs.3,500/- (Rupees three thousand and five hundred only) per petition. The same may be paid to the learned Assistant Solicitor General, Shri Harin P. Raval directly.

(K.A. PUJ, J.)

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